

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXXXX=s.

July 14, 2003

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 26, 2002

Case Number: TSO-0010

This Decision concerns the eligibility of XXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office determined that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual should be granted access authorization.

Background

The individual is employed by a contractor at a DOE facility, and was hired for work that requires an access authorization. The local DOE security office issued a Notification Letter to the individual on August 8, 2002. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a clearance, based upon disqualifying criteria set forth in section 710.8, paragraphs (h), (j), and (l).

The Notification Letter states under Criteria H and J that the individual is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse. According to the Notification Letter, the individual's alcoholism is an illness or mental condition which in the opinion of a board-certified psychiatrist causes, or may cause, a significant defect in his judgment or reliability. During a Personnel Security Interview (PSI) in February 2002, the individual admitted to the following: (1) he was arrested in 1977 and charged with Public Intoxication after having consumed about eight beers; (2) he stopped drinking in 1993, resumed drinking in 1998, and currently consumes from zero to 12 beers per week; and (3) it takes about eight or nine beers for him to reach the point of intoxication. A DOE consultant psychiatrist evaluated the individual on May 10, 2002. Shortly after meeting

with the DOE psychiatrist, the individual told her that he usually has a glass of red wine with dinner almost every night. In a report dated May 24, 2002, the DOE psychiatrist opined that the individual currently meets the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV TR) criteria for Alcohol Dependence, without adequate evidence of rehabilitation or reformation.

The Notification Letter states under Criterion L that the individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy, or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress, which may cause him to act contrary to the best interests of the national security. The basis for this statement is the individual's admission during the February 2002 PSI that he was arrested in 1980 for possession of marijuana and admitted to purchasing it prior to the arrest.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as Hearing Officer in this case.

At the hearing I convened, the DOE Counsel called two witnesses: a personnel security specialist and the DOE psychiatrist. The individual, who was represented by counsel, testified on his own behalf, and called three other witnesses: his current supervisor, a coworker at the DOE facility who was also a personal friend, and his own psychiatrist. The individual's psychiatrist was subpoenaed to appear in court on the eve of the hearing, which went forward as scheduled. The hearing was concluded two months later when the individual's psychiatrist and DOE psychiatrist testified by telephone. The DOE submitted seven written exhibits. The individual submitted two written exhibits, including an evaluation by the individual's psychiatrist with several attachments.

Standard of Review

The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 CFR § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in section 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the

conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 CFR Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 CFR § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." See, e.g., *Personnel Security Hearing* (Case No. VSO-0013), 24 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 CFR § 710.7(a). For the reasons discussed below, it is my opinion that the individual has resolved the concerns in the Notification Letter, and therefore his access authorization should be granted.

Findings of Fact

Except as noted below, the facts are not in dispute. The individual was arrested on minor charges twice before the age of 21. In 1977 he was charged with Public Intoxication after having consumed about eight beers, and in 1980 he was charged with possession of marijuana. Both cases were resolved when the individual paid nominal fines. These arrests occurred in the distant past, the individual has not run afoul of the law since, and I consider resolved any security concerns arising from his arrests. The individual quit smoking marijuana over ten years ago, DOE has no concerns about current drug use, and I consider the marijuana-related "unusual conduct" issue resolved.

The hearing focused on the individual's drinking behavior, as will the remainder of this decision. The case hinges on two competing interpretations of the facts: one advanced by the DOE psychiatrist, and the other offered by individual's psychiatrist. In the February 2002 PSI, the individual, now in his mid-40s, told the interviewer that he occasionally drank heavily as a college student, that he did not like hangovers, that he stopped drinking about ten years ago but resumed drinking five years ago, and that he was currently a moderate drinker. The DOE psychiatrist assumed from reading the PSI transcript that "the individual resumed drinking the same amount of liquor in 1998 and continues to the present time." DOE Psychiatrist's Evaluation, DOE Exhibit 2-2, at 2. The individual disputes this statement attributed to him by the DOE Psychiatrist, and maintains that he drinks only moderately at the present time. Individual's Psychiatrist Report at 5; Hearing Transcript (hereinafter cited as "*Tr.*") at 85-88. The individual also maintains that the DOE psychiatrist should not have assumed that he drinks a glass of red wine every night. He admits telling her that he drank a nightly glass of wine, but at the hearing (nearly a year after his meeting with the DOE psychiatrist), the individual explained it was a temporary practice that he only followed for a short time because he

was concerned about his diet. *Id.* at 85-86. I find no evidence in the record that the individual has gotten in trouble from drinking in the past 26 years, and no evidence that he drinks more than a moderate amount of alcohol at the present time.

The DOE psychiatrist reviewed the individual's life history, diagnosed him as having been alcohol dependent at some time during the period 1977 through 1993, and stated that he should not be drinking at all today. *See generally* DOE Psychiatrist's Evaluation, DOE Exhibit 2-2. Consistent with this opinion, the DOE psychiatrist concluded that the individual had not shown adequate evidence of rehabilitation or reformation. The individual's psychiatrist reviewed the same information, and reached the opposite conclusion that the individual should not have been diagnosed with an alcohol-related disorder. The individual's psychiatrist also emphasized how he had reformed his former drinking behavior since 1993, and that this more recent ten year period was a better indicator of his future behavior. Individual's Psychiatrist Report at 5-6. As explained below, I find the evaluation by the individual's psychiatrist more credible than the evaluation by the DOE psychiatrist.

Testimony of the Witnesses at the Hearing

The Personnel Security Specialist

The DOE personnel security specialist explained that "an individual who drinks habitually to excess exhibits less than complete reliability, stability and good judgment, which are all important character components for an individual seeking access to classified material." *Tr.* at 11-12. She added that an individual under the influence of alcohol "could possibly divulge classified or sensitive information, they could ignore the rules of socially acceptable behavior, perhaps to a criminal degree, like say, perhaps getting stopped for DWIs, that type of thing." *Id.* at 12. She indicated that concerns in the Notification Letter about the individual's drinking were based on the information he reported in the PSI, and the DOE psychiatrist's interpretation of that information.

The DOE Psychiatrist

At the hearing, the DOE Psychiatrist tried to defend the bases for the diagnosis in her report. She indicated that she made a "forensic evaluation," based on the individual's lifetime history. *Id.* at 27. She noted that the individual had a 16-year history of drinking from 1977 to 1993. Although she began on a clear note, parts of her testimony were difficult to follow, as in the following statement:

Because alcohol dependence is a disease of the brain, it is contrary to the common layman's opinion that to have—to be an addict or to be alcohol dependent is a sort of—you know, if I have the will to stop and I stop successfully, or if I—you know, if I have the will to be drunk or whatever.

Id. at 28.

She maintained that even if the individual did not currently meet all the criteria for alcohol dependence in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV), he did meet the criteria for that diagnosis some time during the 16-year period from 1977 to 1993. *Id.* at 30-31; DOE Exhibit 2-1 at 12-13. According to the DOE psychiatrist, “if the DOE is really concerned about security...it is very important to know that anybody who has had an episode of alcohol dependence in the past could likely develop another episode...the vulnerability to have that dysfunction in the brain can be triggered at any time in the future.” *Id.*

The DOE psychiatrist explained why she thought the individual once met the DSM-IV criteria for alcohol dependence. According to the DOE psychiatrist, he met Criterion (1) for “tolerance” during the 16-year period that ended 10 years before the hearing because the amount of alcohol he could drink increased after he began drinking at age 16. *Id.* at 32. She also concluded that the Individual had met Criterion (2) for “withdrawal” during the same 16-year period since the individual had experienced hangovers. For the same reason, i.e. the hangovers, she found the individual met Criterion (5) during that 16-year period: “a great deal of time is spent in activities necessary to obtain the substance, use the substance, or recover from its effects.” Finally, she concluded that he met Criterion (7) during the 16-year period: “the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance,” since the individual continued to consume alcohol despite the fact that he had experienced one blackout that “scared him.” *Id.* at 33-35; DOE Exhibit 2-1 at 12-13.

To her credit, after discussing the bases for her conclusion that the individual met the DSM-IV criteria for substance dependence, the DOE psychiatrist criticized her own report, conceding that she “was mixing the current period with the past period, okay?” *Id.* at 36. She admitted that she “did not get the details of these hangovers,” and that cast doubt on her finding the individual met DSM-IV Criteria (2) and (5) for alcohol dependence. Thus, the DOE psychiatrist opined that “if, let’s say, I cannot prove that two and five are strong, then we go and discuss substance abuse. At the time of my evaluation I was convinced that he already met the criteria for [substance abuse].” *Id.* at 37-38.

The DOE psychiatrist found that the individual had failed to show adequate evidence of rehabilitation or reformation, since he had not pursued any kind of alcohol treatment, or admitted that he had an alcohol problem. *Id.* at 40-42. She thought that the individual’s statement that he did not drink alcohol during the week sounded “very defensive” since “a lot of normal people, social drinkers can drink during the week.” *Id.* at 41. She also attributed great significance to some of the individual’s laboratory tests, particularly his gamma glutamyl transferase (GGT) level, which on two of the times tested was slightly elevated, a few points above the “normal” range, and his mean corpuscular volume (MCV) which was in the “high normal range.” According to the DOE psychiatrist, these test results could be evidence of excessive alcohol consumption. *Id.* at 44.

On cross-examination, the DOE psychiatrist admitted that her history of the individual's drinking behavior relied on statements in his background investigation by a former friend whose close contact with the individual ended over two decades ago. *Tr.* at 49-51. She also admitted that one of the blood tests she administered to the individual, the carbohydrate deficient transferrin (CDT) showed no signs of recent excess alcohol consumption. *Id.* at 54. The DOE psychiatrist acknowledged that the elevation in the individual's GGT levels, which on two occasions were just above the "normal" range, could have been caused by any number of factors other than excessive alcohol consumption, such as exposure to toxic materials including beryllium, toluene, trichloroethylene, and trichloroethane, in his work environment. *Id.* at 68-69.

The individual's attorney also questioned the DOE psychiatrist about the two psychological tests she administered to the individual, the Substance Abuse Subtle Screening Inventory (SASSI), and the Alcohol Use Disorders Identification Test (AUDIT). *See* DOE Psychiatrist's Report, DOE Exhibit 2-1. The DOE psychiatrist conceded that the individual scored below average for alcohol problems on the SASSI, which covered his entire lifetime, and below average on the AUDIT, which covered the current period. *Id.* at 56-61.

The DOE psychiatrist also admitted that she was never able to establish that the individual met the criteria for alcohol dependence in the DSM-IV within a 12-month period, except during the 1970s and 1980s. *Id.* at 63. Finally, she admitted that the individual's life has not been impaired in any way, socially or functionally, over the past ten years. *Id.* at 72-77. After observing the individual's testimony, the DOE psychiatrist stated that she could not diagnose the individual with alcohol abuse at the present time, and she could not make a finding that the individual is drinking habitually to excess today. However, she clung to her diagnosis that the individual met the criteria for alcohol dependence at some time during the past 25 years, stating, "that's a diagnosis that stays with you." *Id.* at 100. The DOE psychiatrist's concluded that "[the individual] had a mental condition that may not be causing it now, but it might be causing that, you know, in the future. And therefore, I find it difficult to answer no, he did not have a problem that any—in my mind, that could come up." *Id.*

The Individual's Psychiatrist

The individual's psychiatrist reviewed the DOE psychiatrist's report, and found that "there was a broad tenor or tone to the approach, and most specifically to the interpretation to place [the individual] in the most negative, i.e. sick light possible...." *Id.* at 137. She thought the DOE psychiatrist's assumptions and interpretations about information that was given by the individual "were consistently in a very negative, if not at times hostile light." *Id.* The individual's psychiatrist thought her counterpart made "a very narrow interpretation," focusing, for example, on the slightly elevated GGT level, ignoring the other possible bases for that result besides excessive alcohol use, and ignoring the extensive other lab results that showed no abnormality. She also found that the DOE psychiatrist ignored the favorable results the individual scored on the SASSI and AUDIT tests. *Id.*

The DOE Counsel cross-examined the individual's psychiatrist extensively, beginning with her qualifications. The individual's psychiatrist explained that she had a high-volume clinical practice, which included a wide cross-section of patients, many of whom had substance abuse issues. *Id.* at 140-142. She described her meetings with the individual, which took about the same amount of time as the DOE psychiatrist's one meeting, and her examination of the individual's medical records, including all of the available laboratory test results. The individual's psychiatrist placed no significance on his GGT levels, which were barely elevated, and "much too low" to indicate liver damage from excessive alcohol use. *Id.* at 158. She admitted she was not an expert on GGT, but testified that she had consulted a gastroenterologist in a previous case, who told her that an elevated GGT "was a very nonspecific finding, and that there were innumerable different causes of stresses to the liver that could elevate the GGT." *Id.* at 148. She also thought that the individual's normal MCV test was "a more accurate indicator than the GGT for alcohol abuse." *Id.* at 149.

The individual's psychiatrist concluded she could not agree with the DOE psychiatrist that the individual ever had alcohol dependence. Conceding that the individual did have a period of heavy drinking 20 some years earlier, the individual's psychiatrist opined that to regard him as henceforth alcohol dependent "is, I think skewing the global clinical picture of that person psychiatrically, functionally, socially, and certainly occupationally." Referring to the DSM-IV, she noted, "Whenever it talks about chemical dependence, I think that first and foremost, what's emphasized is that there is a dysfunctional pattern to their life. These people are not functioning." *Id.* at 166-167. She maintained that the individual was not fairly diagnosed with alcohol dependence even in the past, that he was not abusing alcohol at the present, there was no drug abuse, and he did not suffer from any underlying mental or emotional illness.

The Individual

The individual tried to mitigate the concerns that he had a current alcohol problem. He testified that he stopped seeing the friend who reported derogatory information about the individual's past drinking behavior when the individual began dating his now ex-wife in 1982. The individual stated that he drank occasionally in the 1980s, and stopped drinking altogether in 1993 when his marriage broke up and he returned to school to get a different degree. He admitted drinking too much at a Christmas party in 1999, but pointed out that he got a ride home on that night. He also explained that his consumption of a nightly glass of red wine that he reported to the DOE psychiatrist was short-lived, "for a period of six or seven days" when he was experiencing indigestion and concerned about his diet. *Id.* at 80-87; 96. On cross-examination by the DOE Counsel, the individual described his current drinking as moderate, an occasional a glass of wine consumed with dinner, or an occasional beer. He clarified his statements in the PSI that he would drink an entire 12-pack of beer in one night during the 1970s. According to the individual, he and his friend would share the beer with other people. *Id.* at 87-89. The individual testified that he had been exposed to toxic chemicals on the job. He admitted he had a "wild oats" period 25 years ago, but he did not think he had a current alcohol problem, and believed the DOE psychiatrist had misinterpreted the history he disclosed in the PSI. *Id.* at 92-93.

The Individual's Supervisor

The individual's supervisor testified that the individual was one of his best employees, that he had no problems with absenteeism, and that he never detected any signs of substance abuse by the individual. *Id.* at.108-110.

The Individual's Co-Worker

The individual's co-worker met the individual about a year before the hearing. She sees him daily at work, and she often sees him socially outside the workplace. She recounted the individual's alcohol consumption—one drink or less—when they went out to eat, when they cooked dinner together, and when they visited family members. *Id.* at 101-107.

Analysis

For the reasons explained by the personnel security specialist, a diagnosis of alcohol dependence raises security concerns. Once the local DOE security office got the DOE psychiatrist's evaluation, they were correct to send the case for administrative review. However, after developing the record through the hearing process, I find the DOE psychiatrist's interpretation of the facts is negatively skewed, and places too much emphasis on events that occurred many years ago. I believe the DOE psychiatrist's evaluation of this individual does not show good clinical judgment. She failed to give appropriate weight to the positive factors for the individual, e.g., the time of the conduct, the age and maturity of the individual at the time of the conduct, and the individual's subsequent reformation, which, in my view, are decisive in this case. In her hearing testimony, the DOE psychiatrist ultimately retreated from many key findings in her report. She admitted that her application of the DSM-IV diagnosis for alcohol dependence was shaky for two of the criteria. At the end, she abandoned the finding of current alcohol abuse, and conceded that the individual does not currently drink alcohol habitually to excess.

I agree with the individual's psychiatrist, who rejected her counterpart's evaluation of the individual as "very negative, if not at times hostile." By contrast, the individual's psychiatrist approached the individual's situation with common sense and sound clinical judgment. On the basis of her wide experience as a clinician and practitioner, she emphasized the following facts: (1) the individual's heavy drinking occurred half a lifetime ago when he was a young man, and (2) he reformed his drinking behavior at least ten years ago. She also noted that the individual was never the kind of dysfunctional person who got into trouble from drinking. For these reasons, I have concluded that the DOE psychiatrist's opinion does not support a negative determination on the individual's eligibility for access authorization. Finally, it is worth noting that this is the third case in six months where an OHA Hearing Officer has declined to accept the same DOE psychiatrist's diagnosis of alcohol-related disease, and decided in favor of the individual. *See Personnel Security Hearing* (Case No. VSO-0556), 28 DOE ¶ 82,899 (2003), <http://www.oha.doe.gov/cases/security/vso0556.pdf>; *Personnel Security Hearing* (Case

No. VSO-0565), 28 DOE ¶ 82,905 (2003), <http://www.oha.doe.gov/cases/security/vso0565.pdf>.

Conclusion

Based on the record in this proceeding, I find that the individual has resolved the security concerns under 10 CFR § 710.8(h), (j) and (l) that were specified in the Notification Letter. For the reasons explained in this Decision, I find the individual has shown that granting him access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual should be granted access authorization.

Thomas O. Mann
Hearing Officer
Office of Hearings and Appeals

Date: July 14, 2003